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May 12, 1955

MEMORANDUM FOR: Mr. Warner

SUBJECT: Opinion in Casman v. Dulles

1. Attached is a copy of the opinion rendered by the U. S. District Court for the District of Columbia (Holtzoff J.), on 22 March 1955.

2. Discussion with Miss Kelly, the Assistant United States Attorney handling the case for the Government, produced no new information. I take it this was a test case, so selected because there was little or no controversy on the facts, despite the fact that Miss Kelly, in her argument to the court, advanced what (I infer from her conversation with me) was a most half-hearted argument that the new board was not really the successor to the old board.

3. Examination of the Foreign Service Act of 1946, 60 Stat. 999, at 1035, indicates that specific provision was made in the act for the repeal of 67 statutes or parts of statutes. Under those circumstances, I am not surprised that the court declined to acquiesce in the argument that the act resulted in a "repeal by implication" of the Veterans' Preference Act insofar as it might apply to the Foreign Service. Miss Kelly seemed to feel that this specific listing was the main point that influenced the court and that, had it not been so extensive, the court might have recognized the argument as valid; I am not so sure that this is not wishful thinking on Miss Kelly's part.

4. Under the National Security Act of 1947, Section 102 (c), providing that the Director of Central Intelligence may terminate the employment of any officer or employee of the Agency "in his discretion . . . notwithstanding the provisions of any . . . law", CIA seems to be in a much more favorable position than the Department of State to resist the imposition of the provisions of the Veterans' Preference Act.

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Office of the General Counsel

Enclosure

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